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SPECIFIC QUESTION PERTAINING TO LAND CLASSIFIED AS FARM AND AGRICULTURAL LAND UNDER CHAPTER 84.34 RCW, WHEN THE LAND QUALIFIES FOR CLASSIFICATION BECAUSE OF THE COMMERCIAL AGRICULTURAL ACTIVITY PRODUCED FROM PERENNIAL PLANTINGS.

Question: Farm and agricultural land can qualify for current use status under RCW 84.34.020(2) when the commercial agricultural activity is from the raising, harvesting, and selling of crops produced directly from perennial plants (i.e., orchard fruit trees, grape vines, hops, etc). The question has been asked, “Is it appropriate to put an improvement value on perennial plants located on classified land, even if the highest and best use of the land (when being valued at a ‘true and fair value’ under RCW 84.40.030) indicates that a higher value is warranted by a use not requiring continued existence of the perennial plant improvements?” Another way to phrase the question is, “Can perennial plants have one value when estimating ‘current use value,’ and a different value (or no value) under the ‘fair market value’ assessment?”

Answer: The Department of Revenue’s (Department) answer is “yes.” For land classified under chapter 84.34 RCW, an assessor is required to value the land at its “current use” value and at its “true and fair” (market) value under RCW 84.40.030. Because of this, the assessor must value the land both in its current agricultural use and at its highest and best use. Under the highest and best use scenario, it is possible the land would be utilized in a manner in which the perennial plants would have no contributory value. *However*, when the perennial plants located on classified farm and agricultural land under RCW 84.34.020(2) are of a marketable variety, those improvements *cannot* be disregarded—i.e., assigning no contributory value to the perennial plants when valuing the property under the current use statutes.

The following analysis supports the Department’s answer:

The process for the assessment of property for ad valorem taxation is delineated in chapter 84.40 RCW. Specifically, RCW 84.40.030 sets forth the basis for the valuation of real property and states, in pertinent part, that “all real property shall be valued at one hundred percent of its true and fair value in money ... unless specifically provided otherwise by law.”

Implicit in determining true and fair value is the principle of “highest and best use,” which is further defined in WAC 458-07-030(3). This rule states, in pertinent part, that “highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner’s investment.”

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One exception to this “true and fair value” requirement is the Current Use Program (program) which was created by the Open Space Taxation Act. This program allows certain property owners to have their land assessed and valued on the basis of its “current use” rather than its “highest and best use.” The Legislature determined it was in the state’s best interest to promote preservation of open space land, timberland, and farm and agricultural land by enacting such a program.

For property to be classified in the program, property owners must meet specific requirements as to the use of the land, and any tax benefit resulting from the “current use” valuation extends only to the *land*. Implicit with land classified in the program is the fact that improvements, such as appurtenances or perennial plants, are to be valued at their true and fair value. Subsequent to the inception of the program, Attorney General Opinion 1977-16 (opinion) specifically addressed whether the valuation of perennial plants should be valued as a unit (inclusive with the land value) or should be valued separately, in which the answer was the latter.

The opinion elaborated on the distinction that “growing crops” are exempt from taxation, whereas perennial plants are taxable. The distinguishing characteristics were that growing crops are those products grown from the soil for annual production, while perennial plants produce fruit or some other vegetation harvested annually. The opinion further indicated that a “valuation method which fails to reflect the combined value of land and perennial plants located thereon would, in effect, at least partially exempt such perennial plants from taxation ... [and that] exemptions from taxation, however, are an exclusive matter of legislative concern and administrative officers thus cannot create a tax exemption where none exists by statute. ... It follows that for purposes of ad valorem taxation under chapter 84.34 RCW, farm and agricultural land and taxable perennial plantings located thereon should be listed and valued separately rather than being listed and valued as a unit.”

The process for “current use” valuation of land classified as farm and agricultural land is set forth in RCW 84.34.065, which requires a specific method of valuation for the land only. The improvements, on the other hand, are to be listed separately and valued on the basis of their “true and fair” value, which is the highest and best use of those improvements. The Attorney General opinion noted above specifies—and the Department agrees—that “the land itself is the only item of property which can be subject to a higher and better use. It would seem self-evident that both the ‘highest and best use’ and the ‘current use’ of perennial plants are the same (i.e., as perennial plants).”

The Department believes that when the perennial plants qualify the land for farm and agricultural classification, the assessor needs to determine if the market dictates that that variety of perennial plants has a true and fair (market) value, irrespective of the highest and best use of the land under RCW 84.40.030. If it is determined that the perennial plants have “true and fair” value, as evidenced by the market, then that value *is* the improvement value when the land is classified as farm and agricultural land.

The Department recognizes that instances occur when perennial plants themselves may not have true and fair value due to lack of market evidence that the perennial plants have any value. This could be the case, whether the land is *classified* as farm and agricultural land (valued at a “current use” value) or *unclassified* (valued on the basis of highest and best use “true and fair” value). Examples of this would include: when particular perennial plants have limited marketability due to declining crop production of the plants, i.e. orchard trees that have reached the end of their physical life; or, when market conditions

change and more contemporary varieties are sought, i.e. orchard trees reaching the end of their economic life because the fruit is no longer desirable.

Additionally, the Department recognizes that at times perennial plants may not have true and fair value when viewed as a component of general market conditions. An example would be when the highest and best use of the land represents a market value in excess of the combined land and perennial plant value, and the plants do not contribute value on the “market” side, even though the plants might be a marketable variety. Importantly, this would be the case only on the “market” side—otherwise, for land classified as farm and agricultural land, the assessor needs to determine “true and fair” value (as evidenced by the market) for the perennial plants apart from the highest and best use of the land. In such a case, the perennial plants would have an improvement value under the current use valuation scenario, but no value in the estimation of the parcel under the general market value scenario.

In summary, the Department maintains that when land that qualifies for farm and agricultural classification under RCW 84.34.20(2) because the commercial agricultural activity directly results from the existence of perennial plants situated on the land *and* the market dictates that the perennial plants have a true and fair value regardless of the highest and best use of the land, the assessor is responsible to value and assess the perennial plants accordingly. However, the value of the perennial plants may not always be applicable in the market value estimations for the same parcel.
